IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 244/2006

Shri Vassudev G. Quenim, Panaji, Goa. ..... Petitioner.

V/s.

Bandekar Brother Pvt. Ltd., and anr. ..... Respondents.

Mr. V. B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for he petitioner.

Mr. E. Dias, Advocate for the respondents.

CORAM : SMT. RANJANA P. DESAI, J.

DATE : JUNE 16, 2006.

P.C.

In this writ petition, Order dated 10.5.2006 passed by Civil Judge, Senior Division, Mapusa is under challenge. It appears that in a matter arising out of the instant proceedings, on 13.2.06, the Supreme Court passed the following Order :

> " Interlocutory Application Nos. 3 & 4 are dismissed. However, the trial Court is directed to complete the evidence in Suit No.1 of 2003 within the next four months even if it has to take the case on day today basis. If the case is not concluded within the stipulated period, the trial Court is directed to send a Report to this Court stating therein as to who is responsible for causing delay

in the conclusion of the case."

The time limit set by the Supreme Court on 13.2.2006 has expired on 12.6.06. Prior to that on 10.5.06, an application came to be filed on behalf of the plaintiff praying that further recording of evidence of witness PW.5 be fixed on 15.5.06. The reasons given by the plaintiff were stated in paragraphs 3, 4, 5 and 6 of the said application. I may reproduce those paragraphs. They read as under :

> " 2. PW.5, Shri V.S. Raikar is the last witness to be examined on behalf of the plaintiff and presently his evidence is in progress.
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> 3. Shri V.B. Nadkarni, Senior Counsel engaged on behalf of the Plaintiff is out of station and will be back in Goa only on 13/5/2006. So also the Advocate on Record, Shri Y.V. Nadkarni is out of station and will be returning back to Goa on 21/5/2006.
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> 4. The present Suit is a very complex matter and is connected with the earlier 4 suits viz. 7, 8, 14 and 21 of 2000 in which the trial is already completed. The present Suit also involves voluminous records and documents and therefore it would not be possible for the Plaintiff to engage some other lawyer for conducting the case in the absence of Shri V. B. Nadkarni, Senior Counsel or Shri Y.V. Nadkarni.

> 5. In view of the voluminous documents involved in the present Suit and the fact that the said witness PW.5 is a very important witness in the present case, Plaintiff says that it is not possible to engage some other Advocate to conduct the evidence of the said witness PW.5 in the absence of Shri V.B. Nadkarni, Senior Counsel or Shri Y.V. Nadkarni.
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> 6. Plaintiffs are very much conscious of the directions contained in the Order of the Hon'ble Supreme Court dated 13/2/2006. Plaintiffs respectfully submit that they take responsibility for non-recording of the evidence of PW 5 for 2 days till 14/5/2006 and submit to whatever order the Hon'ble Supreme Court would deem fit and proper in the facts and circumstances of this case."

Since the time limit set by the Supreme Court was to expire on 12.6.06 and the application was moved on 10.5.06, the learned Judge dismissed the application. I am informed that the trial is in progress.

2. I have heard Mr. Nadkarni, learned Senior Counsel appearing for the petitioner. In response to the petition, an affidavit-in-reply has been filed by the respondents. On 6.6.06, this Court had directed that the reply be filed on 8.6.06. Mr. Nadkarni makes a serious grievance that despite the said direction, the reply came to be served on him on 13.6.06 at 3.45 p.m. In the circumstances, Mr.

Nadkarni states that he may be given time to file rejoinder of the petitioner. The learned Counsel for the respondents states that the reply was in fact ready and an effort was made to serve it on the Counsel for the petitioner. However, his office was closed. Mr. Nadkarni points out that during this period, the trial was in progress and in fact the advocates on record were attending the Court. Learned Counsel for the respondents points out that on 9.6.06, the plaintiff has filed pursis in the trial Court stating that the present writ petition is fixed for hearing on 15.6.06 and that the plaintiff is closing his evidence without prejudice to the challenge taken by him in the writ petition, as also the challenge to the order passed rejecting the application for re-examination which the plaintiff proposes to file.

3. Since a serious grievance is made that the affidavit-in-reply is served on the petitioner on 13.6.06, it is only proper that the said affidavit-in-reply is not taken into consideration, so the question of the learned Counsel for the petitioner filing a rejoinder does not arise. Moreover, in my opinion, this petition can be disposed of without taking the affidavits of the parties on record.

4. So far as the challenge to the impugned order is concerned, I feel that it is not well-founded. By order dated 13.2.06, the Supreme Court has given only four months' time for conclusion of the case. Mr. Nadkarni contended that what is meant by the words “if the case

is not concluded" used by the Supreme Court is that the evidence has to be concluded within four months and not the trial. It is not possible for me to construe the order of the Supreme Court in this manner. In my opinion, the trial Court has correctly understood the Order of the Supreme Court and, in the circumstances of the case, it was justified in refusing to grant the plaintiff's application. No interference is called for. Petition is rejected.

SMT. RANJANA P. DESAI, J.

ssm.